LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7203 | **NOTE PREPARED:** Jan 11, 2011
BILL NUMBER: SB 545 | **BILL AMENDED:**

SUBJECT: State Tax Matters.

FIRST AUTHOR: Sen. Kenley | **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X GENERAL | **IMPACT:** State & Local
X DEDICATED
FEDERAL

Summary of Legislation: *Sales Tax Exclusion for Power Used In Manufacturing:* The bill provides that the sales tax exclusion for electrical energy, natural or artificial gas, water, steam, or steam heating service sold to a person for use in manufacturing, production, refining, or agriculture and pertaining to food preparation applies only if those sales are separately metered. (Another law allows an exemption for that part of the energy directly used for these purposes when the sales are not separately metered.)

Net Operating Loss Carryback: The bill eliminates the carryback of net operating losses under the adjusted gross income tax.

Effective Date: July 1, 2011; January 1, 2012.

Explanation of State Expenditures: *Net Operating Loss Carryback:* The Department of State Revenue (DOR) will incur additional expenses to revise tax forms, instructions, and computer programs to reflect the changes made by the bill. The DOR's current level of resources should be sufficient to implement these changes.

Explanation of State Revenues: *Sales Tax Exclusion for Power Used In Manufacturing:* This bill provides that the sales tax exclusion for electrical energy, natural or artificial gas, water, steam, or steam heating service sold to a person for use in manufacturing, production, refining, or agriculture and pertaining to food preparation applies only if those sales are separately metered.

Currently, a person can apply to the DOR for a 100% sales tax exclusion for energy if the energy purchased is predominately (more than 50%) used in the direct production of goods. This bill provides that the Sales

Tax exclusion would not apply to food preparation unless those sales are separately metered. If the sale is not separately metered, IC 6-2.2-5-5.1 provides that a person can still apply for a Sales Tax exemption and refund to cover that portion of energy that is used in food preparation.

To the extent that the number of individuals claiming the 100% Sales Tax exclusion decreases, revenue deposited in the state General Fund and other funds in the Sales Tax distribution formula could increase. The amount of any increase is indeterminable and would depend on the volume of these sales.

Sales Tax revenue is deposited in the state General Fund (99.178%), the Public Mass Transportation Fund (0.670%), the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%

Net Operating Loss (NOL) Carryback: The bill eliminates carry back of NOL by individual and corporate taxpayers beginning in tax year 2012. This change could potentially reduce carry back usage in the long run by business taxpayers, provided they are not able to deduct as much NOL over time without carry back. More likely, this change will not increase the amount of income tax paid in the long run by businesses with NOL, since NOL not deducted in the year it is incurred could still be carried forward for 20 years. However, eliminating carry back of NOL would prevent business taxpayers from using NOL incurred during recessionary periods to obtain immediate refunds by amending returns and deducting these NOL amounts against tax liabilities for the year or two immediately preceding the recession.

While data is available (reported below) showing the amount of NOL claimed annually by individual and corporate taxpayers, the amount of NOL carried back cannot be distinguished.

	NOL Deduction Amount			
Year	**Individual Taxpayers**		**Corporate Taxpayers**	
	Filers	**Deduction Amount (millions)**	**Filers**	**Deduction Amount (millions)**
2000	4,577	$329.8	6,056	861.1
2001	3,938	279.2	5,532	655.0
2002	4,112	311.8	5,625	1,082.5
2003	6,003	338.2	7,055	1,095.2
2004	5,290	309.0	7,564	2,064.8
2005	5,934	284.8	6,960	3,566.8
2006	6,602	202.6	8,450	9,688.6
2007	6,938	409.9	8,319	7,993.4
2008	6,885	432.5	7,405	6,025.8

Background Information: Current statute allows a business that pays the corporate adjusted gross income (AGI) tax or the individual AGI tax to deduct from AGI the net operating loss (NOL) the business incurs during the taxable year. If the business's AGI during the taxable year is not sufficient to deduct all the NOL, the business may: (1) carry back the excess NOL and deduct it from the business's AGI during the two preceding taxable years; or (2) carry forward the excess NOL and deduct it from the business's AGI during subsequent tax years for up to 20 years.

NOL occurs when the operating expenses of a business, such as the costs of materials, rent, and overhead, exceed the operating income of the business. Indiana individual and corporate are entitled to deduct the Indiana portion of their federal NOL deduction. Carry forward in Indiana and for federal tax purposes is 20 years. Generally, federal NOL carry back is limited to two years, but under special provisions some federal NOL is allowed up to a five year carry back. Nonetheless, Indiana limits all NOL carry back to two years.

Explanation of Local Expenditures:

Explanation of Local Revenues: Local revenues could increase to the extent that a local unit receives funds from the Public Mass Transportation Fund, the Commuter Rail Service Fund, or the Industrial Rail Service Fund.

State Agencies Affected: DOR.

Local Agencies Affected:

Information Sources: OFMA income tax databases, 2000-2008.

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